the rest of the term at a lower rental, and now prosecutes this action to recover the difference. *Held,* no recovery can be had. *State Realty Co.* v. *Greenfield* (1920), 181 N. Y. S. 511.

The court cites and recognizes the rule of the early English case of *Paradine* v. *Jane,* Aleyn, 26, to the effect that "Where the law creates a duty or charge, and the party is disabled to perform it without any default in him, and hath no remedy over, there the law will excuse him, * * * but when the party by his own contract creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract." But this rule, says the court, has no application where performance becomes impossible by a change of law or by reason of action taken under governmental authority. The opposite view is held in *London & Northern Estates Co.* v. *Schlesinger,* [1916] 1 K. B. 20, noted in 14 MICH. L. REV. 692, where the lessee, an Austrian, was interned. No reason appears why the decision in the instant case could not have been justifid upon the authority of *Gray* v. *Kaufman Dairy & Ice Cream Co.,* 162 N. Y. 388, 49 L. R. A. 580, wherein it is held that if the premises are relet by the lessor during the continuance of the original term a surrender by operation of law is thereby effected. But this point is not considered by the court, which bases its decision squarely upon the ground that the case under consideration forms an exception to the doctrine of *Paradine* v. *Jane.*

PUBLIC BUSINESS—COURT REVIEW OF REGULATION OF RATES.—By statute in Oklahoma, when any business is a virtual monopoly, and is such that the public must use it, or is of public consequence, or affects the community at large in ways named, it is declared to be a public business and subject to be controlled by the state, by the Corporation Commission, or by any district court of the state, as to rates, etc. Complainant sought to enjoin the Corporation Commission from an attempted regulation of rates for laundry work. *Held,* that a temporary injunction should be granted restraining the commission from enforcing any penalties, and that the federal district court should proceed with the suit to determine whether the rates fixed by the commission were confiscatory. *Oklahoma Operating Co.* v. *Love* (U. S. Sup. Ct., 1920), 40 Sup. Ct. 338.

This case is one of the numerous and still growing progeny of *Munn* v. *Illinois,* 94 U. S. 113, as modified by *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minnesota,* 134 U. S. 418, and many other cases. The decision in the instant case goes on the unconstitutionality of parts of the Oklahoma statute because the only method of judicial review of the findings of the commission which the statute provided is that arising in proceedings to punish for contempt. The party must first violate the order, so as to be cited for contempt, and then if he fails to purge himself he thereupon becomes liable to the penalties provided. Such a judicial review is not due process of law. Citing *Ex parte Young,* 209 U. S. 123, 147, and other cases. The actual decision on the above point seems far less interesting than the implications as to

what may constitute a public business, for the court by directing the suit to proceed seems to assume that the commission or a court can by declaration within the statute make washing clothes or ginning cotton a public business. When *Munn* v. *Illinois, supra,* said "when one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created," conservative property opinion was shocked. The public has an interest in every business that contributes to feeding and clothing mankind, not to speak of many less essential businesses. When does that interest become such as to make the business a public use? The owners of the great grain elevators in Chicago, the "gateway of commerce" for the great grain producing states, "pursue a public employment." So do the elevator men in the smaller gateway at Buffalo. *People* v. *Budd,* 117 N. Y. 1, affirmed 143 U. S. 517, and the owners of elevators in the small Dakota towns, *Brass* v. *North Dakota,* 153 U. S. 391. Pipe lines carrying oil may be treated as "common" carriers. Telegraph companies though not common carriers, are public utilities, *Telegraph Co.* v. *Griswold,* 37 Ohio St. 301; and so are companies furnishing water, *Lumbard* v. *Stearns,* 4 Cush. 60; gas,—*Williams* v. *Mutual Gas Co.,* 52 Mich. 499; electricity, for power as well as light,—*Jones* v. *No. Ga. Electric Co.,* 125 Ga. 618; to mention only a few instances. And the "business of insurance has very definite characteristics" of a business affected with a public interest, *German Alliance Insurance Co.* v. *Lewis,* 223 U. S. 389. The fierce opposition to this development of public interest in businesses is vigorously expressed in the dissenting opinions of Field J. in the *Munn Case,* of Peckham J. in the *Budd Case* in New York, and Brewer J. in the same case and in the *Brass Case* before the United States Supreme Court. The Missouri court in *State* v. *Associated Press,* 159 Mo. 410, very vigorously and scathingly summed up the case against these extensions of public callings, and declined to follow the Illinois court in holding that the business of the Associated Press in gathering news charged it with a public interest, *Inter-Ocean Publishing Co.* v. *Associated Press,* 184 Ill. 438. In the case last cited the court did not wait for the legislature to declare news gathering a public business, but in general the courts add to the list of the public callings only as the legislature speaks. *Ladd* v. *Southern Cotton Press etc. Co.,* 53 Tex. 172. The implications of the instant case seem to be that the legislature may make ginning cotton and laundering public businesses, and no intimation is offered that the Oklahoma Commission may not add to the list any others which it may determine "by reason of their nature, extent, or the exercise of a virtual monopoly therein" to be public, and subject to control by the State. Furthermore, no objection is offered to allowing the legislature, within limits fixed by statute, to delegate to a commission or to a court the power to determine when a business becomes public. As this question is not directly noticed in the opinion inferences in this direction should doubtless be made with caution. But if it is not permissible to grant to the commission such legislative power, it is difficult to see why the suit should not have been settled, instead of continued. Finally,

as is well illustrated by the recent decision in *Producers Transport Co.* v. *Railroad Com.* (U. S. Supt. Ct. Jan. 5, 1920), there will always be a judicial review of a statute, or order of a commission, declaring any business public. If the business was solely to serve particular persons, and was never devoted to public use, no legislative fiat, or order of a commission, could possibly make it public.

PUBLIC UTILITY RATES—OBLIGATION OF CONTRACT RULE AS AGAINST THE COMPANY.—A gas company proposed to increase above the rates agreed upon between the city and the company the charge for gas furnished by the company. The company contended that because of conditions occasioned by the World War the present rates caused an actual loss in operation of the plant. The city claimed an irrevocable contract for fifty years, and by ordinance forbade any increase. From denial by the court below of injunction against the city, the company appeals. *Held,* the company is entitled to injunctive relief. *Knoxville Gas Co.* v. *Knoxville,* 261 Fed. 283.

The present note is supplemental to 17 MICH. L. REV. 429 and 18 *ib.* 320. The controlling question in the principal case is whether the city had power by contract irrevocably to fix the price of gas for fifty years. In *Detroit* v. *Detroit St. Ry.,* 184 U. S. 368, and in *Cleveland* v. *Cleveland City Ry.,* 194 U. S. 517, it was almost assumed that municipalities had such power. In *Home Tel. Co.* v. *Los Angeles,* 211 U. S. 265, and later in *Milwaukee* v. *Milwaukee Elec. Ry.* v. *Wis. R. Com.,* 238 U. S. 174, and *Columbus R. R. & L. Co.* v. *Columbus,* 240 U. S. 399, the court sharply restricted this power to cases where the legislature had renounced in favor of the municipality this sovereign right of police power "by terms so clear and unequivocal as to permit of no doubt as to their proper construction." Following this rule the court in the instant case held that the city of Knoxville had no such power, and hence the rates were subject to revision. There are now enough decisions, and the number is growing very fast these days of rising costs, to justify confidence in certain conclusions. As already pointed out, a municipality is a subordinate political subdivision of the state, with no such power unless it has been very clearly, perhaps expressly, given. *State* v. *Burr* (Fla., 1920) 84 So. 61; *Traverse City* v. *R. Com.* (Mich., 1918), 168 N. W. 481. Even when the legislature has permitted the municipality to fix rates, still the legislature is presumed supreme, and in general may itself, or by a utility commission, revise those rates without the consent of the city. *State* v. *Burr* (Fla., 1920) 84 So. 61; *Milwaukee* v. *R. Com.,* P. U. R. 1920 B. 976, 980. But compare *Re Lincoln Water Co.,* P. U. R. 1919 B. 752, 770; *Collingswood Sewerage Co.* v. *Collingswood,* (N. J., 1918) 102 Atl. 901; *Re Petition for Increase of Street Car Fares,* (N. C., 1919) 101 S. E. 619. It has been said the city is a mere agent and the principal and third party may always revise the contract without leave from the agent. But this hardly expresses the fact, for the agent here contracts for his own benefit, and he and not the principal has to pay the cost. Surely a mere agent in such a case has a right to be a party. *State ex rel. Indianapolis T. & T. Co.* v. *Lewis,* (Ind., 1918), 120 N. E. 129. It is